

Roberg-Perez Decl. Ex. I

March 7, 2011

**Best Buy's Opposition to Plaintiffs'
Preliminary Injunction Motion**

From: Daniel B. Ravicher [ravicher@softwarefreedom.org]
Sent: Monday, December 13, 2010 6:00 PM
To: Roberg-Perez, Sharon E.
Subject: Re: Software Freedom: follow up offline

Sharon,

[Just tried you, but got vm. Feel free to give me a call back when convenient.]

I spoke with my client and here's possibly a way to get the case dismissed without getting all distributions either in compliance or ceased as of execution date of the agreement. I've divided the issues into physical units and firmware, as I think that's an easier way to think about it.

PHYSICAL UNITS

For products that are not expected to ever be brought into compliance (I believe those are the BDLive101, NSBRDVD and NS2BRDVD), BestBuy shall cease not distribute physical units as of the Effective Date of the agreement. I think BestBuy has already stopped distributing these, so that shouldn't be an issue. Conservancy will never reinstate BestBuy's right to distribute BusyBox as part of physical units of those products.

With respect to the other four products, which BestBuy believes will be brought into compliance, BestBuy may continue to distribute physical units of those products for up to 3 months after the Effective Date of the agreement without providing the complete and corresponding source code for the open source software on those physical units. After 3 months from the Effective Date, all physical units of those four products must be distributed by BestBuy in compliance with the applicable open source license, including that the complete and corresponding source code or an offer therefor is provided along with the physical units. Conservancy will reinstate BestBuy's right to distribute BusyBox as part of physical units of one of those products as of the date that the Conservancy confirms that the proposed source code candidate for it is complete and corresponding.

With respect to any physical units of products other than these 7 products, Conservancy will reinstate BestBuy's right to distribute BusyBox as part of the physical units of those other products as of the Effective Date of the agreement.

FIRMWARE NOT IMBEDDED IN PHYSICAL UNITS

As of the Effective Date of the agreement, BestBuy will not distribute any firmware not embedded in physical units for any of the 7 identified products unless Conservancy has approved the complete and corresponding source code therefor. As such, since BestBuy does not foresee ever being able to provide the complete and corresponding source code for three of the products, BestBuy may never distribute firmware for those products after the Effective Date if it includes open source code. If a post-Effective Date firmware-update can be done in a component fashion so as to not require inclusion of open source code, then that's obviously fine. Conservancy would also encourage BestBuy to consider offering the customers of the three products that will never be brought into compliance a coupon or discount to purchase one of the other four products (or some other products) for which the complete and corresponding source code is available (or expected to be). Of course, that's just a suggestion, not a requirement.

With respect to the other four products, BestBuy may not distribute firmware for them unless/until BestBuy has the complete and corresponding source code therefor. So, this means that as of the Effective Date all firmware distributions on the BestBuy website for these 7 products should be taken down (unless we have complete and corresponding source for any of them by then). Once BestBuy has the complete and corresponding source for a firmware, it may distribute that firmware however it sees fit, including through its website, as long as it makes all such distributions in compliance with the applicable open source license.

ADDITIONAL PAYMENT

In exchange for the 3 months grace period allowing for distributions of physical units of the four products expected to be brought in to compliance described above, BestBuy will increase the payment from what is now \$25K to a total of \$175K.

NOTE

All of this is subject to the Linux kernel module exception you and I have discussed. So, Conservancy will not withhold approval of source code for the four identified products based on the failure to provide the source for the LKM's related thereto if the corresponding representations are made by BestBuy.

--Dan

On 12/13/2010 01:34 PM, Daniel B. Ravicher wrote:

> OK.

>

> On 12/13/2010 01:33 PM, Roberg-Perez, Sharon E. wrote:

>>

>> Thanks. I'll call your direct line.

>>

>> -----Original Message-----

>> From: Daniel B. Ravicher [mailto:ravicher@softwarefreedom.org]

>> Sent: Monday, December 13, 2010 12:33 PM

>> To: Roberg-Perez, Sharon E.

>> Subject: Re: Software Freedom: follow up offline

>>

>> Sure, I could chat at 4pm my time.

>>

>> On 12/13/2010 01:29 PM, Roberg-Perez, Sharon E. wrote:

>>> Dan,

>>>

>>> Are you free for a fifteen minute call sometime this afternoon,
>> related

>>> to the settlement agreement, just involving the attorneys?

>>>

>>> thank-you,

>>> Sharon

>>>

>>>

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